

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mobility Fund Phase I Auction)	AU Docket No. 12-25
)	
Public Notice, DA 12-121, Comment)	
Sought on Competitive Bidding Procedures)	
for Auction 901 and Certain Program)	
Requirements)	
)	
Public Notice, DA 12-187, Updated List of)	
Potentially Eligible Census Blocks)	
To:		Chief, Wireless Telecommunications Bureau
		Chief, Wireline Competition Bureau

**REPLY COMMENTS OF
SMITH BAGLEY, INC., TO JOINT COMMENTS**

INTRODUCTION

Smith Bagley, Inc. (“SBI”), files these reply comments in response to the Joint Comments filed on March 16, 2012, by Commnet Wireless, LLC (“Commnet”), NTUA Wireless, LLC (“NTUAW”), and SAL Spectrum, LLC.¹ The Joint Comments request corrections to the list of eligible census blocks for Auction No. 901 by removing from eligibility tens of thousands of census blocks in several states, including vast tribal and non-tribal areas in northeastern Arizona, southeastern Utah and northwestern New Mexico.² While SBI appreciates that the Joint Commenters are taking seriously their duty as stewards of public funds to help the Commission

¹ Hereafter the commenters will be referred to collectively “Joint Commenters” and their comments will be referred to as the “Joint Comments.” SBI is also filing a separate set of reply comments this date on an issue that is wholly unrelated to the Joint Comments.

² An area which, together with southwestern Colorado, is also referred to as “Four Corners.”

avoid undue overlap of publicly-supported infrastructure, SBI nevertheless urges the Commission to exercise caution in evaluating the Joint Commenters' purported coverage of these areas.

The focus of this Reply is northeastern Arizona and northwestern New Mexico, an area that has a long history of underinvestment in telecommunications infrastructure, particularly on the tribal lands in the region. Accordingly, in this area in particular, where there is any doubt as to coverage, the Commission should, as a policy matter, err on the side of maintaining eligibility for a census block. And due to presently unanswered questions about the Joint Commenters' census block centroid coverage claims, the Commission should not rely on those claims unless and until it obtains significantly more backup data and information.

I. Background.

As the Joint Commenters note, the larger national carriers may tend to ignore the basic infrastructure needs of the Four Corners area.³ And, as the Navajo Nation has noted in numerous filings with the Commission, it is one of the most sparsely populated, economically depressed, and underserved areas of the U.S. not only with broadband, but even from a voice telecommunications perspective.⁴ Moreover, this is a rugged, mountainous region, so that sometimes maps of projected coverage can overstate coverage compared to what exists in the real world.⁵

³ Joint Comments at 2; *see also* Navajo Nation Tribal Regulatory Comm'n ("NNTRC") Notice of Ex Presentation at 2, WC Docket No. 10-90, *et al.* (filed Oct. 28, 2011).

⁴ *See, e.g.*, Comments of the NNTRC at 1-2, WC Docket No. 11-42, *et al.* (Jan. 20, 2012); Request for Review and Waiver of the Navajo Nation Diné Education Consortium ("NNDEC") at 6, CC Docket Nos. 96-45 and 02-6 (Sept. 30, 2011) ("The FCC's Broadband Map indicates that 40.2% of the Navajo population currently has no access to wireless service while the national average for those without wireless access is 1.5%.²⁰ Wireless broadband is available to 53.4% of the Navajo population while the national average availability is 96.9%.").

⁵ *See, e.g.*, NNTRC Ex Parte, *supra*, at 2-3.

SBI operates a commercial mobile wireless network in the Four Corners area of Arizona, New Mexico, Utah and Colorado. To some extent, SBI's licenses overlap those of the Joint Commenters, particularly on the Navajo Tribal lands in Arizona and New Mexico. SBI has built extensive wireless coverage, and it currently provides service to over 100,000 people, 56,000 of whom live in low income households on the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo Tribal lands. SBI serves many locations where there is no other usable wireless signal.

While SBI has built a significant network to serve these areas, due to the high costs and limited revenue potential, SBI's construction in its licensed areas is by no means finished. Moreover, SBI recently acquired 700 MHz spectrum and is now positioned to bring 3G/4G services to the areas it serves. SBI is considering participation in the Commission's Mobility Fund auctions,⁶ to help it recover the costs of a 3G/4G build in this economically and geographically challenging service area. SBI could well seek Mobility Fund support for many of the census blocks that Joint Commenters seek to remove from eligibility.

SBI has several questions and concerns about the Joint Comments. First, SBI does not take issue here with the Commission's determinations not to support areas that already have 3G or better service provided by a non-subsidized competitor and not to support areas where a provider is already committed to provide service under another government subsidy program, such as BTOP. However, the Commission should be conservative, not aggressive, in identification of areas ineligible for mobility fund support, particularly in areas in and around the Navajo Nation, where the unmet need for services is so great. Over-projection of current and committed future

⁶ See *Report and Order and Further Notice of Proposed Rulemaking*, ¶ 295, *et seq.*, FCC 11-161 (rel. November 18, 2011) (“*USF/ICC Transformation Order*”).

coverage (and consequent under-support) will likely relegate many areas on the Navajo Nation to no service, or poor service quality, for the indefinite future.

It is critically important that the Commission carefully and thoroughly review and claims of service to avoid keeping the Navajo Nation permanently on the wrong side of the “Digital Divide.”⁷ As a policy matter, a little bit of “extra” subsidy is much less harmful to the public interest than failing to enable broadband services in this area of the country.

II. Joint Commenters’ Details of Existing and Committed Coverage in the Northern Arizona/New Mexico Area Raise Issues That Require Careful Commission Review.

The Joint Commenters submitted two separate and cumulative grounds for their tables of census blocks they suggest should be reclassified as ineligible. First, Joint Commenters seek to remove census blocks that are the “subject of the[ir] BTOP award,”⁸ and second, they seek to remove areas where they are “already providing EVDO coverage.”⁹ SBI has questions and concerns about both grounds. First, the Joint Commenters’ seek to remove census blocks under the BTOP award based on coverage “contours” of the cell sites being built with the BTOP grant.¹⁰ In SBI’s experience in this area, such contours may overstate real-world coverage by a factor of at least two or three.

Second, SBI cannot validate the Joint Commenters’ claimed “existing” EVDO coverage¹¹ based on its own observations in the field. The Commission should require more information

⁷ Request for Review and Waiver of the NNDEC, *supra*, at 5-8.

⁸ Joint Comments at 3.

⁹ Joint Comments at 4.

¹⁰ Joint Comments at Appendix A.

¹¹ Joint Comments at Appendix C.

from the Joint Commenters and an opportunity for interested parties to review and respond to that information before it makes a determination to remove any of the census blocks listed in the Joint Comments as already covered or to be covered under the BTOP award.

A. The Commission Should Not Determine Census Block Eligibility Based on Contour Maps.

The Joint Commenters' first ground for recommending exclusion of certain census blocks is that "NTUAW is constructing a 43-cell network" pursuant to a BTOP award.¹² To the extent the BTOP award is a commitment to provide 3G service, SBI agrees that under the *USF/ICC Transformation Order* the census blocks in the "areas" covered by the commitment are not eligible for the Mobility Fund.¹³ But that begs the question of what the Commission meant by the term "area," an issue that is not addressed in the Joint Comments.

The Joint Commenters' claims of future coverage are based on a map titled, "NTUA Wireless 700 MHz BTOP LTE Contours." The contours depicted appear to be based on the plotted locations of the 43-cell network that BTOP committed to fund. As the Commission knows well, contour maps are not intended to represent real-world coverage. And, although the Commission has a rule for 850 MHz contours,¹⁴ there is no such rule for 700 MHz, so there are no standards for the development of such contours. But more importantly, real world coverage is typically less and, in rugged mountainous areas such as northern Arizona and New Mexico, coverage is *much* less than the contour approach. SBI estimates that use of the contour map would

¹² Joint Comments at 3.

¹³ *USF/ICC Transformation Order*, ¶¶ 341-42.

¹⁴ 47 C.F.R. § 22.911(a)(1).

overstate the number of census blocks that will actually be covered by the BTOP build by thousands.

The Joint Commenters did not explain why they submitted a contour map and determined census block centroid coverages using such a map.¹⁵ The Joint Commenter's BTOP build is well underway, with many sites nearing completion. They likely have completed site acquisition and engineering for most, if not all, of the 43 BTOP cell sites. From those parameters, they would have been able to develop a projection of the real-world coverage that can be expected from the 43 BTOP-supported sites, just as they have done in Appendix C. Perhaps the Joint Commenters interpreted the Commission's directive in the *USF/ICC Transformation Order* to, "identify any areas with respect to which they have made a regulatory commitment to provide 3G or better wireless service"¹⁶ to mean "areas of service," not "areas of coverage." While this could be one possible interpretation of the *USF/ICC Transformation Order*, SBI encourages the Commission to require actual or projected coverage of a census block centroid before removing it from eligibility.

While SBI does not currently have access to the Joint Commenters' grant application or specific grant requirements at this time, it would be unusual for the Joint Commenters' BTOP grant to require any further build out of the service areas covered by the grant beyond the initial 43-cell network that is depicted on the contour map. Unless and until the Joint Commenters can show an ongoing BTOP commitment—beyond the initial 43-cell site build described in the Joint

¹⁵ They offered no explanation of the map, simply stating that, "Appendix A hereto is the BTOP Award LTE coverage map...."

¹⁶ *USF/ICC Transformation Order*, ¶ 342 (emphasis added).

Comments—to provide real-world coverage to all the census blocks within the Appendix A contour map, the Commission should not rely on the proffered contour map.¹⁷ Only real-world coverage meets the overriding goal of the *USF/ICC Transformation Order*, which is to expand mobile broadband coverage into unserved areas that need it.

Were the Commission to use the Joint Commenters’ Appendix C contours to determine eligibility, it would mean that sizable real-world coverage gaps in the Four Corners area would remain uncovered indefinitely, as no further BTOP awards are expected and the Joint Commenters would have them removed from Mobility Fund eligibility. This area of the country is notoriously high cost, with poor demographics, which is the reason BTOP funding was awarded to begin with. The Commission should not remove any of the census blocks from eligibility based on contour maps. It would be a disservice to the tribal and non-tribal residents of this area who have waited so long to receive any kind of mobile coverage.

B. In SBI’s Experience, Existing 3G Coverage in Northern Arizona and New Mexico is Not Nearly as Expansive as Shown in Appendix C.

The Joint Commenters’ claims of existing 3G service in northeastern Arizona and northwestern New Mexico (Appendices C, E, and F to comments) cannot be validated by SBI.¹⁸ SBI does not have access to all the data need to plot existing projected coverage at this time. But, SBI does have experience and knowledge in the field sufficient to question the scope and qualifi-

¹⁷ Another sign of need for further investigation and greater understanding of what the BTOP grant actually covers is found in the BTOP Executive Summary available at: <http://www.ntia.doc.gov/legacy/broadbandgrants/applications/summaries/2023.pdf> According to the NTIA, the grantee’s “proposed funded service area ... encompasses some 24,843 census blocks” Yet Joint Commenters claim that the BTOP contours cover 44,583 census blocks close to double the number the NTIA estimated. See Joint Comments at 5.

¹⁸ In Arizona, in particular, the coverage depicted as existing is so extensive one wonders how it could have qualified as “underserved” for BTOP award purposes.

cation of the purported existing coverage. Given the questions raised herein, the Commission should obtain more data from the Joint Commenters to ensure that it does not erroneously remove census blocks that have marginal or no eligible coverage from the Mobility Fund auction.

SBI has engineering, technical and marketing personnel moving and working throughout northern Arizona and New Mexico in the Four Corners area at all times. Such personnel are generally familiar with locations of Joint Commenters' wireless facilities and the scope and nature of coverage. In fact, SBI and Joint Commenters share some of the same cell towers in the area and SBI has reviewed most or all of Joint Commenters' towers for possible collocation. SBI has also engaged in discussions with Joint Commenters for possible leasing of broadband backhaul facilities. The real-world coverage in this mountainous area does not appear to SBI to be nearly as extensive as shown in Appendix C.

Additionally, to SBI's knowledge, the Joint Commenters have extensively deployed 1xRTT¹⁹ data services, which offers maximum download speeds of 144 kbps, with typical real-world speeds of 60-80 kbps. But SBI is only aware of a few, limited, areas in New Mexico where Commnet has deployed true 3G services.²⁰ SBI is not aware that Joint Commenters have deployed anything beyond 2.5G anywhere nearly as extensively as their Appendix C shows.²¹ There may be good explanations and answers to these questions, but pending receipt of additional and more specific data, the Commission should not rely on Appendix C to make any changes to the lists of eligible census blocks.

¹⁹ Sometimes referred to as "2.5G."

²⁰ The Commission requires a speed of at least 200 kbps downstream. *See, e.g., USF/ICC Transformation Order*, ¶ 361-62.

²¹ Moreover, there is no backhaul available in the area that will support true 3G or 4G services.

CONCLUSION

While the Joint Commenters have the right idea, as often is the case, the devil is in the details. The Commission must balance the need to use Mobility Fund support wisely against the need to bring broadband services to one of the most underserved areas of the country. Due to a number of unanswered questions about the Joint Commenters' coverage claims, the Commission should obtain significantly more backup data and information before making any decisions on eligibility.

Respectfully submitted,



By: _____

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